

**MINUTES**

**MONTANA SENATE  
56th LEGISLATURE - REGULAR SESSION  
COMMITTEE ON BUSINESS AND INDUSTRY**

**Call to Order:** By **CHAIRMAN JOHN HERTEL**, on February 12, 1999 at 9:00 A.M., in Room 410 Capitol.

**ROLL CALL**

**Members Present:**

Sen. John Hertel, Chairman (R)  
Sen. Mike Sprague, Vice Chairman (R)  
Sen. Dale Berry (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Bea McCarthy (D)  
Sen. Glenn Roush (D)  
Sen. Fred Thomas (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** Bart Campbell, Legislative Branch  
Mary Gay Wells, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 386, 2/5/1999  
SB 367, 2/5/1999  
SB 391, 2/5/1999  
Executive Action: SB 123; SB 125; SB126

***{Tape : 1; Side : A; Approx. Time Counter : 0}***

**HEARING ON SB 386**

**Sponsor:** SENATOR DALE MAHLUM, SD 35, MISSOULA

**Proponents:**    **Mona Jamison, MT Historical Society Foundation**  
                      **Ward Shanahan, President, MHSF**  
                      **Brian Cockhill, Director, MHSF**  
                      **Kati Kintli, MT Tavern Assoc.**

**Opponents:**    **None**

**Opening Statement by Sponsor:**

**SENATOR DALE MAHLUM, SD 35, MISSOULA.** The bill that I bring before you today is **SB 386**. It is a unique bill in that this bill was purchased by this legislative body two years ago when the Virginia City-Nevada City properties were purchased by the State of Montana. These three liquor licenses that we are talking about in this bill were included as an asset which the state purchased from the Bovee family. These licenses belong to the state and it is the obligation of the Montana Heritage Commission to effectively utilize these licenses in a manner that will be an asset to the state and yet be in a non-competitive role in the community that they serve. The state needs leeway in the manner in utilizing these licenses. These are not a big money maker; however, they are needed in a way to portray our early history of the significant heritage diggings that we have in Virginia City and Nevada City.

**Proponents' Testimony:**

**Mona Jamison, Lobbyist, MT Historical Society Foundation.** We stand in strong support of this bill. Two years ago the legislature granted the \$9.3+ million to make the acquisitions. During the process, the Bovee Enterprises included the three liquor licenses that they had owned. Under current state law, only an individual, corporation or other business entity may operate and own those licenses. The licenses were then transferred over to the Montana Historical Society Foundation and the Daly Mansion Trust. Legally, the state may not take ownership of the licenses. The State of Montana should own those licenses. This bill transfers those licenses to the Montana Historical Society. This bill does not allow the state to accept the transfer of any other licenses, just this one. The other benefit of the bill is that these licenses will be operated just as all the other business are operated in Virginia City and Nevada City. The licenses will be leased to private businesses and let the people with the expertise operate the business and lease the license. We urge a Do Pass.

**Ward Shanahan, President, MHSF.** I would like to point out that at the time we were purchasing Virginia City, these were assets within the group of assets we were trying to purchase. We were

faced with either turning them back to the seller or inventing a device so that we could hold them for the benefit of the State of Montana. Since my names are on those liquor licenses, I had to go through a criminal background check. There is a great deal of accounting which has to be done, etc. This is an expense we don't need. We are trying to run a foundation to give money for historical projects. We don't need the administrative expenses connected with the liquor licenses. We just need to get this all straightened out in a good manner.

**Brian Cockhill, Executive Director, MHSF.** We do have some situations needing immediate attention such as a lapsed liquor license is forfeit. That would be a costly loss. Since we are a trust entity supporting a state agency, we felt that we needed a clean operation. We even try to operate the bars with a degree of decorum. Not only does it put Mr. Shanahan at risk as the ultimate owner of the licenses, but it is costing us a large amount of money and time. We hope you will look favorably on this bill.

**Kati Kintli, MT Tavern Assoc.** I appear here on behalf of Mr. Staples. He has worked on this bill with the sponsor and others. We support this bill and we want to thank **SENATOR MAHLUM, REP. CARL OHS** and **Ms. Jamison** for taking into consideration the concerns of existing licensees when drafting this legislation. We urge your support of this bill.

**Opponents' Testimony:** None

*{Tape : 1; Side : A; Approx. Time Counter : 10.6}*

**Questions from Committee Members and Responses:**

**SEN. BEA MCCARTHY** asked **Ward Shanahan** if he has three liquor licenses in his name. **Mr. Shanahan** replied that his name is on the liquor licenses. One license has been signed over to the Foundation that operates the Daly Mansion in Hamilton. The Mansion is the property of the Montana Historical Society. So this license is an enhancement to the project. The other two are still in his name. **SEN. MCCARTHY** asked if the two other liquor licenses are going to Virginia City. **Mr. Shanahan** replied "yes." **SEN. MCCARTHY** asked if the state were going to lease the licenses to places which already have their own liquor licenses. **Brian Cockhill** answered that there is one bar that is not owned by the state. That is the Pioneer Bar. Bale of Hay is an asset of the state. The other full beverage license is being handled by the

Wells Fargo Restaurant. The third license is a wine and beer license which is being operated with the Folies. **SEN. MCCARTHY** asked if it were the Foundation's intention that once the licenses are assigned, would they be on a permanent basis or would they float each year. **Mr. Cockhill** was quite sure that the intent was to have the licenses stay where they have been but would be leased out on an annual basis.

**SEN. MIKE SPRAGUE** asked **Mona Jamison** if an effective date of "on passage of the bill" would be a good idea. **Ms. Jamison** said that is a great idea. **SEN. SPRAGUE** said that time would be of the essence. **Ms. Jamison** asked if the senator would make an amendment. An early effective date would save the state money because the tourist season starts in May.

**SEN. JOHN HERTEL** asked **Ms. Jamison** if she has any idea of what the state might realize with the leasing of these liquor licenses. **Ms. Jamison** asked **Ms. McCabe**, who does the books, to address the question. **Ms. Sharon McCabe, MT Historical Society**, said that currently this past season the licenses have lost approximately \$3,000. Between the three licenses, this does not take into account any of the employees' time. That might add approximately \$20,000. If the bill passes, the state might make approximately \$5,000 on each license. This would be per season. This is just an estimate. When the leases are put out to bid, they will take the highest bidder.

**Closing by Sponsor:**

**SENATOR MAHLUM** closed. Thank you for a good hearing on a unique bill. I would urge a Do Pass. The licenses are an asset of the state and will be managed by the Montana Heritage Commission.

**HEARING ON SB 367**

**Sponsor:** **SENATOR FRED THOMAS, SD 31, MISSOULA**

**Proponents:** **David Bell, Bell Motor Co., Cut Bank**  
**Bill Underrimer, Selover Buick, Billings**  
**Jim Utterback, Capital Motors, Helena**  
**Steve Turkewicz, MT Autodealers Assoc.**  
**Stuart Doggett, MT Manufactured Housing & RV Assoc.**

**Opponents:** **Steve Blankenship, Ford Motor Co.**  
**Mona Jamison, General Motors**

**Opening Statement by Sponsor:**

**SENATOR FRED THOMAS, SD 31, STEVENSVILLE.** I bring **SB 367** for your consideration. It primarily does two things. The first thing it will do limits the factory "look-back" period to 12 months for an audit for warranty work and incentive programs. We need to set the rules straight so that it is fair and equitable in Montana between the auto dealers and the manufacturers. Small businesses in Montana have a hard time when they are being dictated to by large manufacturers. The second thing would limit factory ownership of dealerships in Montana to just two situations.

The factories continue to seek ways to reduce their costs and improve their profits. This bill would insure Montana auto consumers the ability to buy their cars locally and be served locally. The factories have stated that it is their desire to reduce their warranty costs. There are three ways to do this. One is to reduce warranty coverage offered by car buyers. However, this is something they don't want because they want to continue to keep good warranty coverage. Secondly, the factories can build cars and trucks better. They have done this and will continue to do so. Thirdly, they could shift those costs to another source--namely the auto dealers. This bill curbs the last option by limiting the factory's time for auditing warranty work performed by the auto dealers and thus reduces the amount of the charge backs to the dealerships. The issue is not whether the work has been completed or whether the customer has driven away and is very satisfied with the warranty work. The issue is whether the factories can reduce their costs for an unlined "t" or an undotted "i". The bill answers those questions. They can make sure the "t's" and "i's" are crossed and dotted but they have to do that within a 12-month period. The 12-month period also applies to the incentive programs that are offered by the factories to buy a new car.

The second issue in this bill is insuring that Montana consumers will continue to be able to buy cars and trucks from their local community franchised dealers. The factories have shown an unprecedented desire to eliminate franchised dealerships and replace them with factory owned super dealerships. This might be fine in L.A. or New York, but here in Montana, which is sparsely populated and the distances between towns is great, is another question. Our towns only have any one of any one line make. The overwhelming economic power of the factory owned super store would have significant impacts on Montana's community franchised dealerships. This could facilitate the closing of these dealerships with this kind of competition. This would not benefit any consumer. This bill allows for two cases for the factory ownership of dealerships. One is that during a period of

transition between owners and dealer development programs. Twenty-seven states have statutes either limiting or prohibiting factory ownership or management of retail car and truck dealerships. We hope you will pass this legislation.

***{Tape : 1; Side : A; Approx. Time Counter : 25.6}***

**Proponents' Testimony:**

**David Bell, Bell Motor Co., Cut Bank.** I will focus on the incentive programs that the manufacturers offer in order to sell their products. This became a big part of our business 20 years ago. These incentives can amount to cash back rebates to the consumer or dealer incentive programs where they offer cash back for selling a certain model. There are low interest financing, lease programs, special interest rebates if you are a member of AARP, American Legion Club, etc. and that is where this whole system can get complicated. You can stack by combining two or three or more incentive programs on one purchase. To illustrate the complexity of all this, I have my incentive binder. This is a binder for 1998 Chevrolet incentive programs. (It is a three-ring binder approximately six inches deep.) If we claim an incentive that is not eligible and give it to a customer, we get charged back that amount of money. It is a complicated business and absolutely difficult to keep up with all the incentive programs. I also have one tab in the binder that is empty which is where we are supposed to store our lease programs and we have to put those in a separate binder because there are so many. As an illustration, in the last two weeks from January 29 through February 9, I printed off every incentive program that General Motors has issued and that adds to eight business days. This is the stack in the last two weeks. There are 38 separate announcements which comes to about five a day. At the first of the year there were a couple of incentive programs which were originally announced to go from January through March 31. Half way through the program they sent out a revision and said on one model the incentive was eliminated. Another illustration is a program from Pontiac that was issued on January 4, 1999. It was a program for national dealer cash incentives. If we sell a car on the list, the dealer receives a \$500 cash incentive. This was to run from January 5 through March 31. There are explanations and details of the program (three pages). Looking at the dollar amounts, you will see an asterisk beside each amount. So you flip over one more page to the back and read that an asterisk indicates "effective through January 31, 1999". When you receive approximately five of these programs a week and they play games, it is a struggle. When they have two years to go back to audit our records, it is a nightmare. If we give a customer a \$1,000 rebate and they sign the rebate coupon, but then fail to get them

to sign a separate acknowledgment form, that would be charge back under the guidelines of the programs.

**Bill Underriner, Selover Buick, Billings.** I would like to speak about the warranty part of the bill. The manufacturers have a warranty on their autos that range from three years to 36,000 miles and four years to 50,000 and some even longer. We honor those warranties as an agent for the manufacturers. We do the work in our shops in good faith to the customer and we submit those warranties to the manufacturer to be paid. Once those warranties have been paid, we receive our money. There are 531 different ways that Chrysler can charge you back for a warranty that you have already let the customer out of the door. At the last warranty audit we had at our dealership, I was charged back over \$30,000 for transmissions that were under warranty that were bad. We sent the transmissions back to the factory, and because we did not attach a tag to each one that was in a bulletin that I did not see, they charged back \$30,000. And they did receive each one of those transmissions. I can't go back to the customer. I am out that money. I can appeal that but with General Motors there are not a lot of appeals that you can go through. I did do that, but all my appeals were denied because I didn't put those tags on the transmissions. I have an article from the Wall Street Journal that according to Ron Zarella, Chief, North American Operations, improvement in quality and better handling of warranty claims are reducing warranty costs. Mr. Zarella said GM aims to bring warranty costs to 1% to 1.5% of net sales by 2001, down from about 3% earlier this decade. Please limit the time that they can go back and look at our warranty claims to one year.

***{Tape : 1; Side : A; Approx. Time Counter : 39.3}***

**Jim Utterback, Capital Motors, Helena.** We sell Ford, Lincoln, Mercury and Toyota products. I would like to address dealer ownership by the factories. I have sold and bought three different dealerships in Montana and you might think that I would be one who would like to be able to sell to anyone. Selling to the factory in my opinion would not be fair. There are shortages of parts and product. A company like Ford which could own a dealership and say they would never do so, would receive more product than we would receive. I get a Lincoln Navigator about one a quarter right now. The stores in Salt Lake get five or six a month. The stores in Salt Lake are owned by Ford right now. There are parts that I can't get and are back-ordered. There is a dealership in Salt Lake City, five times the dealership of any in Montana, with a truck running around Montana selling parts here that we, as Ford dealers, cannot get. It is not fair. Thank you.

**Steve Turkewicz, MT Autodealers Assoc.** We know the size of Montana. Montana dealers are entrepreneurial and competitive but we have a limited population base. In Montana we sell about 32,000 new cars and trucks. That is a good week in Los Angeles. We don't think it is in the best public interest of Montana to have factory owned dealerships. We have a heritage of seeing what happens when we have large scale corporate owned entities that are in Montana and serving Montana consumers. I don't want to see the headline that says, "Ford Leaves Town".

**Stuart Doggett. MT Manufactured Housing & RV Assoc.** I stand in support of this bill. (He made this statement but was unable to get his statement on tape as the tape was being changed.)

*{Tape : 1; Side : B; Approx. Time Counter : 0}*

**Opponents' Testimony:**

**Steve Blankenship, Ford Motor Co.** We thank you for the opportunity to outline our concerns about this bill. The first concern is of the provision in the warranty repair section. We support the 12 month audit of warranty repairs. However, there is a provision that says that we cannot deny a claim if the dealership makes a good faith effort to repair the part. We prefer that they actually fix the part. We will pay dealers to make the actual repair. We are concerned about the 12 month audit period on the incentives. One of the things we try to do is to make sure the customer has received the incentive that they should have. Many times we hear about dealers having incentive problems when a customer will call us and say my neighbor bought a Thunderbird and he got an incentive and I bought a Thunderbird and I didn't. We would like to be able to go back for the two years to reconstruct the situation and make sure they receive the proper incentive. Section 3 of the bill amends the prohibited act concerning the ownership issue. We feel this is politics of fear. In the last two years, dealerships have come under public ownership. This is a new area and we don't know where we are going but I would like to correct one misunderstanding. The Ford retail networks are joint ventureships with dealers. Dealers are the CEO's of these organizations. They are running them with factory money and the plan at this point is that the factories would ultimately sell out their share. We can't run dealerships. We proved that before. We make cars. The problem with this provision is that it limits options for dealers and for companies. This provides that we cannot own any share in a dealership even if it is a minority share. If the dealer wants to sell and has a problem, we can participate to buy out the store and close it down or help in a transition to a larger organization where one of our retail networks could run it. We



feel it would be best to hold off on this provision. If you pass this provision, no one will come to Montana to talk with a dealer to see if a joint venture would be possible.

**Mona Jamison, General Motors.** I would urge your opposition to this bill. This bill is bad public policy, bad for business and industry and bad for consumers. Please look at page 4 of the bill. We would ask you to consider these changes. On 5, talking about warranty, that would be 30 days from receipt of the claim. That is unreasonable. They should have 30 days to deal with it and 30 days to pay. We do support (B) 12 months on the warranty. On lines 15 to 18, a manufacturer may not deny a claim or reduce the amount to be reimbursed to the dealer. . . . in compliance with the written warranty. This is an unrealistic standard. There should be a duty to fix it. On lines 19-22, this is on the incentive programs. At first the bill was drafted at six months. After a visit with Mr. Turkewicz, they extended it to a year. That is simply not long enough. Sometimes there is fraud and dishonesty and the manufacturers need that time to investigate. I have an article **EXHIBIT (bus35a01)** about a lawsuit against a Montana dealer for forgery and theft on some of these incentives. These things do happen and the proper time is needed. We would like these extended to two years. On Section 4 is the prohibited act. The new language is on page 6 of the bill. The first section in (A) says that the manufacturer cannot own or operate and the big deal is the ownership of the dealership. If a person does not want to sell to a manufacturer, either total or partial, just don't do it. To put into law a provision as to whom you can sell to or not sell to undermines the freewill of Montana citizens. Evidently, the dealers are willing to deny themselves freewill choice from a fear of a change in the national business climate that might be so uncertain. The next section in (B) says, but if we need it temporarily, we can go ahead and do it for one year. In (C), it seems to conflict with (A) because that says you can own but not operate unless that person who is in the venture stands some risk and loss. This section is against a healthy, good business climate. If there are legitimate concerns about a manufacturer coming in and through partial or total ownership hurting other dealers acting uncompetitively or unfairly, address that, but don't address something that hasn't happen here and denies people the opportunity to engage in business in that manner. Here is a story that was in the Sacramento Bee in California **EXHIBIT (bus35a02)** about consumers posing challenge for independent new-car dealers. The first paragraph says it all:  
"Independent new-car dealers are becoming an endangered species in the U.S., largely because of a consumer rebellion that is forcing many of them to change or go out of business." What you are doing is to look at the manufacturers as the "bad boys". It

is not good to pass bad business laws for Montana and think you are doing it to help consumers. We urge a vote no.

**{Tape : 1; Side : B; Approx. Time Counter : 12.8}**

**Questions from Committee Members and Responses:**

**SEN. MIKE SPRAGUE** asked **Mona Jamison** if she were planning to make some amendments to the bill. **Ms. Jamison** said that she would have them ready on Monday at 8:00 a.m.

**SEN. SPRAGUE** asked **Bill Underrimer** if he felt he was giving up an option as to whom he could sell his dealership to whether it was a partial or total sale. **Mr. Underrimer** replied that his family feels they have a very good business and they could sell their business to someone today. I wouldn't want the competition of a manufacturer and wouldn't sell to one either. Up to this point, the dealers have not had a hard time selling their dealerships.

**SEN. DALE BERRY** asked **Mr. Underrimer** if there were a manufacturer dealing in Sheridan or even in Laurel, how tough would that make it for you to sell your business. **Mr. Underrimer** said yes, that it probably would, knowing that they could probably get products and parts that he couldn't.

**SEN. VICKI COCCHIARELLA** asked **Steve Turkewicz** if the only way to have Saturns sold in Montana would be to have a partnership between a manufacturer and private owner. **Mr. Turkewicz** said that is correct. There is service available for Saturns at certain dealers in Montana. We don't have Lexus or Acura in Montana. A Ford representative told him once that there are certain products they don't even want to sell in Montana.

**{Tape : 1; Side : B; Approx. Time Counter : 18}**

**SEN. COCCHIARELLA** asked **Mr. Underrimer** to address the same issue. **Mr. Underrimer** said that at the present time he had a Saturn service provider certificate. Under the agreement, he is allowed to fix their automobiles. He has also asked to sell the automobiles for Saturn and was told that once the factory is up and running and the dealers become profitable, there is a possibility that he would get a franchise for Saturns.

**SEN. COCCHIARELLA** asked **Ms. Jamison** the same question. **Ms. Jamison** said that General Motors, unlike Ford, has not dealt with the issue of the company ownership issue. If Saturn were to come here and they wanted to partner with you, it would be prohibited. Any portion whether 1% or 99% would be prohibited.

**SEN. BEA MCCARTHY** asked **Steve Turkewicz** is any of **Ms. Jamison's** amendments would be acceptable. **Mr. Turkewicz** said that at this point it would not be in the best interest of our membership.

**SEN. GLENN ROUSH** asked **Steve Blankenship** about the warranty issues and if this bill were passed as it is written, would this make the manufacturers raise their prices to help pay for some of the added costs. **Mr. Blankenship** said yes. Warranty costs are passed onto the consumer and are added to the price of the car. Any time they are not able to resolve problems in terms of audits or service that should have been rendered, those costs are just kicked right back into the cost of the car. **SEN. ROUSH** asked about the incentive programs and the statement that sometimes dealers do not pass them on to the consumer. **Mr. Blankenship** said there are instances of fraud and we deal with those separately but it takes a reasonable audit period to find out what is happening and build a case. Usually those cases are settled between the dealer and the manufacturer without bringing in the attorney general.

**SEN. BERRY** asked **Mr. Blankenship** about the warranty charge backs and specifically about the \$30,000 charge back for not having a tag on the transmission. **Mr. Blankenship** said that he did not know but the \$30,000 does seem to be a large issue. He felt that was an exceptional thing.

**SEN. SPRAGUE** asked **Mr. Blankenship** that if it were true that the consumer ends up paying for all the incentives, the gimmicks, the tradeoffs, etc. **Mr. Blankenship** said that all the incentives are designed to be outside the negotiated deal. The theory is the customer and the dealer arrive at a price and then the incentive is factored in. The problem that Ford has with these incentives is that some of the manufacturers send a check to the customer later on. Ford works it out so that money passes from the dealer to the consumer right there so it can be used as part of the down payment.

**Closing by Sponsor:**

**SEN. THOMAS** closed. The legislation should stay the way it is written. You should consider it intact. The suggestion of going to two years should not be considered. Fraud is fraud and I don't believe it takes two years to build a case. It is a reasonable public policy to set a separation up of manufacturing versus sales. It should be divided up. We are dealing here with a concentration of economic power and might that is beyond our reach. When that is present, it is good public policy to say we need that separation.

*{Tape : 1; Side : B; Approx. Time Counter : 29.6}*

HEARING ON SB 391

Sponsor: SENATOR FRED THOMAS, SD 31 MISSOULA

Proponents: Dave Wheelihan, General Manager, MT Electric  
Cooperative Assoc.

Doug Hardy, General Manager, Park Electric  
Cooperative

Terry Holzer, General Manager, Yellowstone Valley  
Electric Cooperative

Ric Brown, General Manager, Ravalli County Electric  
Cooperative

Allen Theissen, President, MT Electric Cooperatives  
Assoc., Great Falls

Ron deYoung, MT Farmers Union, Flathead Electric  
Cooperative

Ron Ostberg, MT Independent Telecommunications  
Systems

Opponents: Jack Haffey, Executive Vice President, Energy  
Services Div., Montana Power Co.

Jerome Anderson, Attorney, PP&L of Montana

Gene Meier, Propane & Fertilizer Co., Lewistown

Bob Gilbert, MT/WYO L.P. Gas Assoc., Sidney

Doug Johnson, MT Cable Telecommunications Assoc.

Tom Harrison, MT Cable Telecommunications Assoc.

Riley Johnson, National Federation of Independent  
Business

Neil Colwell, Avista Corp.

Opening Statement by Sponsor:

SENATOR FRED THOMAS, SD. 31, MISSOULA. I would like to present amendments **EXHIBIT (bus35a03)** to the bill which essentially is the bill. The original bill has been changed radically. This handout then is the new bill as rewritten. This is not just a housekeeping measure. It does update the old statutes that are in law now dealing with cooperatives in what they do and don't do. It keeps cooperatives in the energy business. Please look at amendment No. 4 on page 2. This amends section 35-18-105 MCA concerning permissible purposes for incorporation. This is the most important language for you to consider and look at. In Subsection 5, it ends the subsection by saying what a cooperative can do in Montana and then "must be subject to all state taxes otherwise applicable to like business or commercial enterprises".

This is not a tax bill; the issue is probably going to be a lot about taxes.

The importance of this legislation is that it really does set a continued direction for the future of Montana. There have been substantial changes over the last couple of years. One of those that has to do with this is where Montana Power is going to be phasing out selling electricity. This is enabling legislation for **SB 390** that was passed in 1995. Some of this implements what was designed previously. One is the change in selling electricity over time. In **SB 390** there will be that long four-year transformation of the industry. Though this may not be that big of a change, it does set the direction.

*{Tape : 1; Side : B; Approx. Time Counter : 40.9}*

**Proponents' Testimony:**

**Dave Wheelihan, General Manager, MT Electric Cooperatives Assoc.** He read his testimony and handed it in **EXHIBIT (bus35a04)**.

*{Tape : 2; Side : A; Approx. Time Counter : 0 - 4; Comments : The remainder of Dave Wheelihan finished on Tape 2.}*

**Doug Hardy, General Manager, Park Electric, Livingston.** He read his testimony and handed it in **EXHIBIT (bus35a05)**. He handed in five letters in support of the bill **EXHIBIT (bus35a06)**, **EXHIBIT (bus35a07)**, **EXHIBIT (bus35a08)**, **EXHIBIT (bus35a09)**, **EXHIBIT (bus35a10)**.

**Terry Holzer, General Manager, Yellowstone Valley Electric Cooperative.** He read his testimony and handed it in **EXHIBIT (bus35a11)**.

*{Tape : 2; Side : A; Approx. Time Counter : 9.8}*

**Ric Brown, General Manager, Ravalli County Electric Cooperative, Corvallis.** He read his testimony and handed it in **EXHIBIT (bus35a12)**.

**Allen Thiessen, President, MT Electric Cooperatives Assoc., Great Falls.** He read his testimony and handed it in **EXHIBIT (bus35a13)**.

*{Tape : 2; Side : A; Approx. Time Counter : 16}*

**Ron deYoung, MT Farmers Union, Flathead Electric Cooperative.** This bill clarifies our position and what we can do.

Cooperatives have always paid their fair share of taxes and will continue to do so in the future. We urge your consideration.

**Ron Ostberg, MT Independent Telecommunications Systems.** I also am here to represent board members of my own cooperative. I echo the previous comments. They will not be getting involved in things without the membership support. I recommend a Do Pass on the amended bill.

**{Tape : 2; Side : A; Approx. Time Counter : 17.8}**

**Opponents' Testimony:**

**Jack Haffey, Executive Vice President, Montana Power Co.** He read portions of his statement and added some others in light of the "new bill" **EXHIBIT (bus35a14)**.

**Jerome Anderson, Attorney, PP&L of Montana.** During my lifetime, the rural electric concept has changed from necessity of small groups of people that banded together to help themselves, to now, when we have a number of large utilities operating as coops. Now they are here at the legislature asking for tax advantages and to expand to business on main street. If these utilities want to play on the field of the big boys, then welcome to the club so long as they pay the same taxes as the rest of us and are subject to the same financial pressures.

**Gene Meier, Propane & Fertilizer Co., Lewistown.** He read his testimony and handed in a copy and some supporting literature **EXHIBIT (bus35a15)**.

**Bob Gilbert, Sidney, MT L-P Gas Assoc.** We are strongly in opposition to **SB 391** as introduced. I belong to electric coops and I want to tell you that this bill as originally introduced, does not reflect my feelings or opinions as a member of those coops nor does it represent the feelings of the Montana L-P Gas Association. It takes away from privately owned businesses struggling to make a living. The amendments do make it better. I urge the committee to really look at the amendments. There was a comment made about coops not being allowed to compete in the market, but you must remember at their conception they were given certain benefits to fill a "nitch" market and that market is still there. If they want to get out of the "nitch", then they need to do as proposed in the amendments and become a corporation and pay the same taxes and that should include federal income taxes. We will reserve our opposition to the amendments until we have had a chance to study the amendments.

**{Tape : 2; Side : A; Approx. Time Counter : 31}**

**Doug Johnson, Missoula, MT Cable Telecommunications Assoc.** He read his testimony and handed in a copy **EXHIBIT (bus35a16)**.

**{Tape : 2; Side : B; Approx. Time Counter : 0}**

**Tom Harrison, MT Cable Telecommunications Assoc.** I think the things that concern us are the level playing field and the cost in taxes and a level playing field in regulation. To have this cooperative monopoly untaxed and this only if they get out into an area that is not covered by the bill, like gas, electric, cable TV, etc. They then say they will pay taxes there. They know the argument is so unfair that they avoid taxes in this bill. It is an unfettered, untaxed, unregulated monopoly buying and selling other profit-making companies, converting them to non-profit companies, taking them off the tax rolls, not supporting the state or federal government in taxes which is clearly the irony of this bill. Here these people who get the federal subsidies on the cheap money enabling them to operate and they don't even pay for that government. But they want the advantages.

**Riley Johnson, National Federation of Independent Business.** We support everything that has been said but would point out on page 2, Section 2 of the amendments, Section 5 that says "and anything else" like grocery store, etc. then we will pay taxes. And you should add local as well as state taxes. We would prefer that be forced into a separate "for profit corporate subsidy" preventing the cooperative from utilizing its low to no tax equipment, personnel, property cross fertilizing into other businesses and that is what they are doing. They are hurting our business because they are getting into appliance sales, repair and service contracts, lighting sales and services, etc. They should be restricted to electricity.

**Neil Colwell, Avista Corporation.** They wanted to be recognized as in opposition to the bill.

**{Tape : 2; Side : B; Approx. Time Counter : 3.7}**

**Questions from Committee Members and Responses:**

**SEN. VICKI COCCHIARELLA** asked **Dave Wheelihan** if cooperatives were allowed to buy grocery stores, etc. and not be taxed. **Mr. Wheelihan** said he was not aware of coops doing that stuff right now. That is not the purpose of that amendment. As the system opens up to competition, it may have its core customers that might be getting their electricity from someone else, but it still allows them to provide that service to the members. **SEN. COCCHIARELLA** asked if the amendments would take "for profit" tax

paying entities out of the market place and make them non-tax paying entities under some kind of protective umbrella. **Mr. Wheelihan** said that he didn't believe so. They are talking about their core business of electricity. If they get outside of that realm, then they would form a taxable entity and pay the same taxes as anyone else does.

**SEN. BEA MCCARTHY** asked **Mr. Wheelihan** and **Mr. Haffey** if they could come together on some agreement on fair taxation, etc. **Mr. Wheelihan** said that they had been working together for the last month and a half and he believes that they have come a long way and possibly they could get this worked out. **Mr. Haffey** said that in the way the bill was presented, he couldn't speak with a great deal of authority, but they would have to look at the new bill. Billing, metering and communication services related in amendment number 4, page 2, if these businesses can be engaged in rural cooperatives without having the taxation and regulation law, etc. applied to them, then that is inappropriate. So even with the sweeping amendments, he is not sure that there is a level playing field. It needs to be carefully look at as there may be some inadvertent consequences that may go way beyond the minimal change that is needed and appropriate for the coops to want to coordinate Title 69 with Title 38.

**SEN. MCCARTHY** asked if the Public Service Commission would level the playing field on billing, metering, etc. **Mr. Haffey** said not on taxation matters, but they would on billing, etc.

**SEN. GLENN ROUSH** asked **Mr. Wheelihan** if cooperatives were looking into natural gas services. **Mr. Wheelihan** said that at this point they did not know whether the enabling legislation would allow them to do that. Some coops have had some discussions about doing so. None have begun any of that process. Some of the things involved in this legislation would allow them to bundle services through a "for profit" taxable entity that their competition could offer to their people that open up their system and they could come in and say you can have internet, natural gas, telephone, cable TV, etc. and with the passage of **SB 390**, it was agreed that would happen. This enabling legislation allows them to do that through "for profit" entities as well and offer those services to their customers and compete.

**SEN. ROUSH** asked if a coop is looking into the natural gas industry. Electric coops, under a "for profit" corporation would not be regulated under the PSC and is that correct. **Mr. Wheelihan** said yes because **SB 390** deregulated the energy business. These services are consistent with the deregulated environment. Our core poles and wires are retained and regulated



by the Board of Directors just like Montana Power Co.'s poles and wires remain being regulated by the PSC.

**{Tape : 2; Side : B; Approx. Time Counter : 12.8}**

**SEN. MIKE SPRAGUE** asked **Mr. Wheelihan** if the amendments would fit under the old title of the bill. The taxation of coops is at 3% and would coops be a centrally or locally assessed. **Mr.**

**Wheelihan** said that in 1939 they put the telephone and electric coops together and then the electric part was opted out of the original bill. The amendments/bill were made to the existing law for electric coops and there was much in the old law that allowed coops to be doing things that are being questioned right now. Under existing law, coops can go into the generating part of energy.

**SEN. JOHN HERTEL** asked **SEN. THOMAS** what he was proposing to give to this committee and be able to act on it. **SEN. THOMAS** will have **Mr. Campbell** put the amendments into the computer and put a grey bill together for the committee.

**SEN. ROUSH** asked **Mr. Haffey** that after the deregulation of the natural gas industry in Montana and customer choice is out there, are they not still regulated under the PSC. **Mr. Haffey** said there were two bills, **SB 390** electrical restructuring and customer choice and **SB 396** natural gas restructuring and customer choice. Each of the bills acknowledged that there is competition at the power supply level so those acknowledgments in state law mean that competition can exist and customers can look for the best deal for gas and for electricity. It all goes through a regulated transmission and distribution system, both gas and electricity. This is a transition time for both of those industries. About 50% of our market has chosen an alternative supply in gas and 17% already of our market has chosen an alternative supply in electricity. Soon all will have alternative clauses. The rates for delivering the gas to the customer are regulated and established by the PSC.

**SEN. SPRAGUE** asked **SEN. THOMAS** (and said that he could give his answer in his closing statement) that having sat in on the Senate taxation hearings two years ago, he remembered everyone was in agreement that people were going to cross boundaries like rural going urban, but no mention was made of expansion into other areas if he had any thoughts on this subject.

**Closing by Sponsor:**

**SENATOR THOMAS** closed. In speaking of a gray bill, these amendments are pretty much it. Section 48 is being amended to the document that was handed out. On page 2, Section 105 "permissible purposes of incorporation" and down in there, there is a new subsection number 4 that talks about telephone service. My understanding is that language was amended in 1987 and that is not an issue any more. Telephone cooperatives can participate and be after new telephone business without much restriction. To say that the electrical cooperatives can now do telephones is a mute point. I hope that you can sift through this and get the answers. We did not anticipate that this would be confusing but it is difficult to follow and digest the language. There are issues that need to be looked at and resolved. You have our attention on taxes and are willing to work on that. Thank you.

*{Tape : 2; Side : B; Approx. Time Counter : 27.1}*

**EXECUTIVE ACTION ON SB 126**

**Motion:** SEN. MCCARTHY moved that SB 126 DO PASS.

**Discussion:** **Motion:** SEN. MCCARTHY moved that SB 126 BE AMENDED.

**Discussion:** Mr. Campbell explained the amendments **EXHIBIT (bus35a17)**. There were only two changes. On page 3, No. 19, the dates have been extended to make their renewal license. On page 4, No. 21, it adds another sentence that says "The late fee is the exclusive remedy for the late payment of a renewal fee." These are the exact same amendments on **EXHIBIT (bus35a18)** and **EXHIBIT (bus35a19)**.

**Vote:** Motion that SB 126 BE AMENDED carried unanimously.

**Motion:** SEN. THOMAS moved that SB 126 BE AMENDED.

**Discussion:** SEN. THOMAS wanted to reduce the penalty of \$500 a day fine to \$100. Mr. Campbell said that in law now for a misdemeanor, if an amount is not established, the amount is up to \$500. SEN. THOMAS said that is true but it does not say up to \$500 a day. SEN. COCCHIARELLA said that they pumpers have enough time to comply and that the rules have been relaxed in order to make sure they can accomplish compliance in the set time.

**Vote:** Motion that SB 126 BE AMENDED failed 1-6 with SENATORS BERRY, COCCHIARELLA, ROUSH, HERTEL, MCCARTHY AND SPRAGUE voting no.

Motion/Vote: SEN. MCCARTHY moved that SB 126 DO PASS AS AMENDED.  
Motion carried 6-1 with SEN. THOMAS voting no.

EXECUTIVE ACTION ON SB 123

Motion: SEN. MCCARTHY moved that SB 123 DO PASS.

Discussion: Motion/Vote: SEN. MCCARTHY moved that SB 123 BE  
AMENDED. Motion carried unanimously. 7-0

Motion/Vote: SEN. MCCARTHY moved that SB 126 DO PASS AS AMENDED.  
Motion carried unanimously. 7-0

EXECUTIVE ACTION ON SB 125

Motion: SEN. MCCARTHY moved that SB 125 DO PASS.

Discussion: Motion/Vote: SEN. MCCARTHY moved that SB 125 BE  
AMENDED. Motion carried unanimously. 7-0

Motion/Vote: SEN. MCCARTHY moved that SB 125 DO PASS AS AMENDED.  
Motion carried unanimously. 7-0

**ADJOURNMENT**

Adjournment: 12:05 A.M.

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SEN. JOHN HERTEL, Chairman

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MARY GAY WELLS, Secretary

JH/MGW

**EXHIBIT (bus35aad)**